



Decision

Matter of: Cassandra B. Wyatt - Backpay Award - Deduction of
Lump-Sum Annual Leave Payment

File: B-231943

Date: July 14, 1989

DIGEST

An employee who is retroactively restored to duty and awarded backpay may not retain a lump-sum payment for annual leave even though the settlement agreement of her discrimination complaints failed to consider deduction of this amount from her backpay award. This lump-sum payment is not subject to waiver since deduction of the lump-sum payment from the backpay award does not result in a net indebtedness to the government.

DECISION

This decision is in response to an inquiry from the Department of the Army as to whether an Army civilian employee who was separated and later retroactively restored to duty and awarded backpay may retain a lump-sum payment for accrued annual leave.^{1/} For the following reasons, we hold that the employee must repay the lump-sum payment and the payment is not subject to waiver.

BACKGROUND

Cassandra B. Wyatt, a grade GS-4 civilian Army employee, was separated from her position on December 11, 1987. On March 25, 1988, Ms. Wyatt and the Army signed a negotiated settlement agreement under which Ms. Wyatt agreed to withdraw her discrimination complaints and the Army agreed to reinstate Ms. Wyatt retroactively with backpay. The Army calculated the gross amount of backpay as \$4,181.50 less deductions for taxes, retirement, and FICA for a net amount of \$3,108.57. The Army failed to address the repayment of \$279.40 which represents lump-sum payment for 44 hours of

^{1/} The request was submitted by Colonel G.L. Nix, Finance Corps, Office of the Director of Finance and Accounting, Department of the Army.

accrued annual leave which she had received upon her separation.

The Army questions whether the terms of the settlement agreement must be implemented without regard to the issue of the lump-sum payment and whether collection of the lump-sum annual leave payment of \$279.40 may be waived. Ms. Wyatt states that she is willing to give up her entitlement to the 44 hours of annual leave, and she emphasizes that to repay that amount would impose financial hardship on her.

OPINION

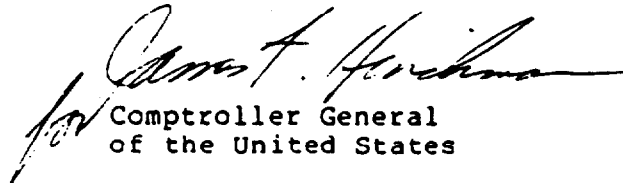
Our Office does not render decisions on the merits of, or conduct investigations into, allegations of discrimination in employment in other agencies of the government. However, we may determine the legality of awards agreed to by agencies in informal settlements of discrimination complaints, based upon our authority to determine the legality of expenditures of appropriated funds. Albert D. Parker, 64 Comp. Gen. 349 (1985); Equal Employment Opportunity Commission, 62 Comp. Gen. 239 (1983). We have held that the amount that may be awarded under an informal settlement of a discrimination complaint must be related to backpay and may not exceed the gross amount of backpay the employee lost, less any interim earnings and other deductions as specified under the Back Pay Act regulations, 5 C.F.R. § 550.805(e). Parker, supra; Equal Employment Opportunity Commission, supra.

With regard to the lump-sum payment of annual leave, our decisions have held that an employee who is retroactively restored to duty and awarded backpay in accordance with the Back Pay Act, 5 U.S.C. § 5596 (1982), may not retain the payment since the statute authorizing the lump-sum payment, 5 U.S.C. § 5551 (1982), expressly conditions payment on an employee's separation from government service. Vincent T. Oliver, 59 Comp. Gen. 395 (1980). Since Ms. Wyatt's separation was determined to be erroneous and she was reinstated retroactively, her separation is regarded as if it had never occurred. There is no basis on which Ms. Wyatt could be permitted to elect the option of retaining the lump-sum payment and cancelling the annual leave. Oliver, supra, at 397.

Although the agency failed to deduct the lump-sum amount when it computed Ms. Wyatt's backpay amount, we conclude that the agency must collect this amount, as required by our decisions in Parker, supra, and Equal Employment Opportunity Commission, supra.

Finally, with regard to the issue of waiver of the lump-sum payment, our decisions have held that such payments are subject to waiver only to the extent that the deduction of the payment from the backpay award results in a net indebtedness to the government. Jeffrey Kassel, 65 Comp. Gen. 865 (1986); Angel F. Rivera, 64 Comp. Gen. 86 (1984); Oliver, supra. In this case, deduction of the lump-sum payment of \$297.40 from the net backpay amount of over \$3,000 would not result in Ms. Wyatt's net indebtedness to the government. Therefore, waiver would not be available in this case.

Accordingly, the Army should seek recovery of the lump-sum amount and should credit the annual leave to Ms. Wyatt as provided in 5 C.F.R. § 550.805(f) (1988).


for Comptroller General
of the United States